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IN THE

Supreme Court of the United States

October Term, 1973

No. 73-748

AMERICAN RADIO ASSOCIATION, AFL-CIO, *et al.*,
Petitioners,

v.

MOBILE STEAMSHIP ASSOCIATION, INC.
and ROBERT E. MALONE,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

Petitioners, American Radio Association, AFL-CIO, International Organization of Masters, Mates and Pilots, AFL-CIO, National Marine Engineers Beneficial Association, AFL-CIO, National Maritime Union of America, AFL-CIO, Radio Officers Union of the United Telegraph Workers, AFL-CIO, Seafarers International Union of North America, AFL-CIO, Price L. Mitchell, Charles D. Malloy, Layton Overstreet and Louis Neira, pray that a writ of certiorari issue to review the judgment of the Supreme Court of Alabama entered on May 3, 1973.

Opinions Below

The opinion of the Supreme Court of Alabama, dated May 3, 1973, affirming the granting of a temporary injunction by the Circuit Court of Mobile County, Alabama, is set forth at pages 5a-26a of Appendix C and is reported at 279 So. 2d 467.

The denial by the Supreme Court of Alabama, dated July 5, 1973, of the application for rehearing, which was entered without opinion, is set forth at page 27a of Appendix D.

The order for injunction of the Circuit Court of Mobile County, Alabama, dated November 11, 1971, is set forth at pages 28a-30a of Appendix E; that court issued no opinion, finding of fact or conclusion of law.

Jurisdiction

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

The order of the Supreme Court of Alabama issued and was entered on May 3, 1973 (Appendix C, pages 5a-26a). An application for a rehearing was denied on July 5, 1973 (Appendix D, page 27a). Petitioners' application for an extension of time in which to file the present petition for a writ of certiorari was granted by Mr. Justice Powell, Jr. by order dated September 18, 1973, which order extended the time for filing of this petition to and including November 9, 1973.

Questions Presented

The state court injunction prohibited peaceful primary informational picketing of foreign flag vessels in the Port of Mobile. The picketing, in the nature of a "Buy American" campaign, protested the loss of jobs of American seamen to foreign flag vessels paying substandard wages and benefits. The picketing was conducted by a group of American maritime unions which did not seek to represent, organize or support the crews of the foreign flag vessels. Some American workers voluntarily refused to cross the picket line. The complainants were an association comprising local stevedoring companies and shipping companies in the Port of Mobile and a local farmer whose produce was shipped through that port. The injunction was issued without any opinion, finding of fact or conclusion of law. The questions thus presented are:

1. Whether the state court is without jurisdiction to adjudicate the controversy because the protection accorded and the restraint imposed on peaceful picketing in the context of a labor dispute is within the exclusive regulatory scope of the National Labor Relations Act and therefore within the sole competence of the National Labor Relations Board.

2. Whether the prohibition of peaceful informational picketing abridges freedom of speech in violation of the First Amendment as it is incorporated by the Fourteenth Amendment of the United States Constitution.

Statute Involved

Petitioners contend that their peaceful informational picketing was protected by §7 of the National Labor Relations Act, 29 U.S.C. §157, as "concerted activities for the purpose of * * * mutual aid or protection * * *" or, if not so protected, then prohibited or arguably prohibited by §8 of that Act, 29 U.S.C. §158(b)(4), and in either event that the statute wholly preempts state judicial regulation of the picketing. The pertinent provisions of the National Labor Relations Act are set forth at pages 1a-3a of Appendix A.

Constitutional Provisions Involved

Petitioners contend that peaceful informational picketing was an exercise of freedom of speech protected by the First Amendment as it is incorporated in the Fourteenth Amendment of the Constitution and consequently not subject to any abridgment. The Constitutional provisions are set forth at page 4a of Appendix B.

Statement of the Case

The Parties

The union petitioners are members of the Committee of American Maritime Unions which consists of American unions representing American seamen on American flag vessels; the individual petitioners are members of the union petitioners; the individuals participated in the picketing under instructions from the Committee of American Maritime Unions at the Port of Mobile in November

of 1971. That picketing was undertaken by the Committee on a selective nationwide basis to protest the enormous loss of jobs of American seamen to foreign flag vessels paying substandard wages and benefits in contrast to those paid to American seamen (92a-95a).

Identical selective picketing by the same unions using identical picket signs and distributing identical leaflets is now before this Court pending argument in *Windward Shipping (London) Limited, et al., Petitioners,* v. *American Radio Association, AFL-CIO, et al., Respondents,* No. 72-1061, bringing up for review the decision of the Texas court in 482 S.W. 2d 675, holding that the subject matter was preempted by the National Labor Relations Act. Identical selective picketing by the same unions using identical picket signs and distributing identical leaflets was before this Court in *Port of Houston Authority, etc.* v. *International Organization of Masters, Mates, etc., et al.,* 456 F. 2d 50 (5 Cir. 1972), cert. den. 409 U.S. 894 (1972) wherein the Fifth Circuit held that restraint of the picketing there was prohibited by the Norris-LaGuardia Act.

The respondent Association is comprised of local employers; the individual respondent is a local farmer.*

The Nature, Consequence and Purpose of the Picketing

At the time of the injunction hearing in the Circuit Court of Mobile County, petitioners were peacefully picketing two foreign flag vessels with picket signs (6a)

* In *Port of Houston Authority, supra,* the unsuccessful plaintiff was also an association of local employers of longshoremen. In *Windward Shipping, supra,* the unsuccessful plaintiffs were owners, operators or agents of foreign flag vessels.

and were distributing leaflets (7a) advising of the loss of jobs of American seamen, requesting the public not to patronize the foreign flag vessels, and requesting the public to patronize American flag vessels. The picket sign was as follows:

"ATTENTION TO THE PUBLIC

"The wages and benefits paid aboard the vessel SS Aqua Gloria and the SS Bel Hudson are substandard to those of the American seamen. This results in extreme damage to our wage standard and the loss of our jobs.

"Please do not patronize these vessels. Help the American seamen.

"We have no dispute with other vessels at this site."

The names of the picketing unions appeared beneath the quoted matter.

The leaflet distributed was as follows:

"TO THE PUBLIC

"American Seamen have lost approximately 50% of their jobs in the past few years to foreign flag ships employing seamen at a fraction of the wages of American Seamen.

"American dollars flowing to these foreign ship owners operating ships at wages and benefits substandard to American Seamen, are hurting our balance of payments in addition to hurting our economy by the loss of jobs.

"A strong American Merchant Marine is essential to our national defense. The fewer American flag ships there are, the weaker our position will be in a period of national emergency.

"PLEASE PATRONIZE AMERICAN FLAG VESSELS, SAVE OUR JOBS, HELP OUR ECONOMY AND SUPPORT OUR NATIONAL DEFENSE BY HELPING TO CREATE A STRONG AMERICAN MERCHANT MARINE.

"Our dispute here is limited to the vessel picket at this site, the SS ".

The names of the unions again appeared at the bottom of the leaflets. The name of the vessel was inserted in the blank space.

The picketing was peaceful, taking place inside the State Docks by permission (96a) after the picketing had commenced at the gates. Some waterfront employees crossed the picket line and some refused to cross the picket line (96a, 116a, 123a). It is undisputed that there was no mass picketing, no blocking of ingress or egress, no assaults, no coercion, no threats, and no shouting (8a, 96a). The only act complained of, except for the peaceful informational picketing, was that the unions "have also directed employees of other employers * * * to refuse to provide any work or services with respect to such vessels." (37a—¶19 of Association complaint). It is uncontroverted, however, that the only things "directed" at any employee of the stevedoring companies were the picket signs and leaflets distributed by mute pickets (8a, 143a, 144a).

The picketing was "low profile". At the time of the hearing only two foreign flag vessels were being picketed by four or five pickets. To the gratification of the pickets, cargo operations on the two vessels ceased because some American longshoremen refused to cross a picket line of American seamen protesting the loss of American jobs.

The purpose of the picketing was as stated on the picket signs and on the leaflets distributed by the mute pickets.

The trial court did not find that the picketing was conducted by any unlawful method or for any unlawful purpose. The Supreme Court of Alabama nevertheless held that the purpose of the picketing was unlawful because the unions hoped that the picket lines would be honored by American workers (and one union member, Neira, expressed a similar hope with considerable enthusiasm from the witness stand, although not on the picket line), and that the honoring of the picket line would and did result in damage to the complainants, which was anticipated by petitioners.

The Litigation and the Manner in Which the Federal Question Was Raised

Petitioners first sought to raise a federal question by removal to the United States District Court for the Southern District of Alabama, Southern District (Certified Transcript, pages 9-11). The petition for removal stated that the complaint in the state court action alleged a secondary boycott comprehended by §303 of the Taft-Hartley Act, 29 U.S.C. §187, a provision allowing an independent action for damages for acts which were denominated unfair labor practices under §8(b)(4) of the National Labor Relations Act, 29 U.S.C. §158(b)(4). That attempt to raise the federal question was aborted by the order granting remand (Certified Transcript, page 13).

Thereafter, petitioners raised the federal question of preemption, that the picketing was either protected or prohibited or arguably prohibited by the National Labor Relations Act, and that the relief sought forbade the exercise of the federal right to engage in concerted activities for mutual aid or protection. Additionally, petitioners

raised the question that the relief sought would prohibit peaceful informational picketing in violation of the First Amendment as incorporated in the Fourteenth Amendment. Those questions were raised in the demurrer (52a); the pleas (53a, 54a); and the answer (55a, 56a). And those questions were raised on appeal to the Supreme Court of Alabama in the assignment of errors (57a, 58a).

The order for injunction of the District Court of Mobile County (28a-30a) restrained "interference" and picketing at or near premises owned, occupied or used by members of the respondent Association. For all practical purposes, the area covered by the injunction included the entire Port of Mobile and included the picketing of any vessel flying any flag. The injunctive order of November 11, 1971, was issued without any accompanying opinion or finding of fact or conclusion of law. On appeal to the Supreme Court of Alabama, that court made valiant attempt to salvage the injunction by stating:

> "The trial judge's decree, granting the writ of temporary injunction, made no finding of fact from the evidence. But *apparently* the trial judge found from the evidence that there was wrongful interference by the appellants with the appellees' business, *for otherwise, he would not have ordered the writ of temporary injunction to issue.*" (20a, 21a, emphasis supplied)

The Alabama Supreme Court held that there was no preemption because the National Labor Relations Act was inapplicable, reasoning that the picketing constituted an interference with the internal economy of the foreign flag vessels; reliance was upon the trilogy of cases of this Court, *Benz, Incres* and *McCulloch*, discussed *infra*. It also

held that, since there was a hope by the unions that longshoremen would not cross the picket line at the foreign flag vessels, and because this hope was realized, there was a tortious interference with the business of the stevedoring companies and the farmer.

Reasons for Granting the Writ

The Supreme Court of Alabama has disregarded or misconstrued controlling decisions of this Court on the question of whether or not picketing of a foreign flag vessel in an American port by American unions which do not seek to organize, represent or support the crews of the foreign flag vessels, constitutes an interference with the internal economy of the foreign vessel.

It was upon the Alabama court's determination that such picketing did interfere with the internal economy that it decided the question of preemption, holding the National Labor Relations Act wholly inapplicable, citing *Benz* v. *Compania Naviera Hidalgo,* 353 U. S. 138 (1957), *Incres Steamship Co.* v. *International Maritime Workers Union,* 372 U. S. 24 (1963), and *McCulloch* v. *Sociedad Nacional de Marineros de Honduras,* 372 U. S. 10 (1963). The Alabama court overlooked, however, the fact that this Court has twice held that there is no interference with the internal economy of a foreign flag vessel when the picketing union does not seek representation of or lend support to the crew of the foreign flag vessel. *International Longshoremen's Association, Local 1416, AFL-CIO* v. *Ariadne Shipping Co., Ltd.,* 397 U.S. 195 (1970) and *Marine Cooks and Stewards Union* v. *Panama S.S. Co.,* 362 U.S. 365 (1960).

Absent the "red herring" of internal economy, the teaching of *Garner* v. *Teamsters, Chauffeurs and Helpers Local Union No. 776,* 346 U.S. 485 (1953) and *San Diego Building Trades Council* v. *Garmon,* 359 U.S. 236 (1959) is inescapable. The acts complained of are either protected or arguably prohibited by the National Labor Relations Act. No other court or agency, state or federal, has jurisdiction of the subject matter.

The decision of the Alabama court is also in conflict on the question of preemption with the decision of the Texas court in *Windward Shipping, etc., et al.* v. *American Radio Association, et al., supra,* now pending argument in this Court.

We suggest that the Alabama Supreme Court erred grievously in holding that the picketing was not constitutionally protected freedom of speech, overlooking or misconstruing the line of cases beginning with *Thornhill* v. *Alabama,* 310 U.S. 88 (1940). The escape from that authority was through the avenue of what we somewhat facetiously refer to as a new cause of action discovered in Alabama which may be denominated the "Tortious Hope". The Alabama court has reasoned that because peaceful primary informational picketing is effective, *i.e.,* American longshoremen refuse to cross a picket line of American seamen protesting loss of their jobs, and because the picketing unions hope that the picketing will be effective, and because stevedoring companies or farmers are injured in their business as a result, the picketing has somehow become unlawful. We suggest that the maxim *damnum absque injuria* is surely applicable. Otherwise, any effective peaceful picketing is *per se* unlawful. The result is an absurdity.

ARGUMENT

I

The National Labor Relations Act preempts state jurisdiction to enjoin peaceful nonobstructive primary informational picketing of a foreign flag vessel in the United States by American seamen truthfully protesting the adverse effects of substandard wages and benefits paid by the foreign flag vessel on the domestic employment opportunities of American seamen and concurrently requesting the public not to patronize such vessel.

The issue of preemption has been muddied by the injection of the contention that the object of the picketing was to interfere with the internal economy of the foreign flag vessels. That contention is a late starter, never having been pleaded as an unlawful objective. The only unlawful objective pleaded was the interference in the contractual relations between the stevedoring companies and the foreign flag vessels and thus the alleged interference with the rights of those companies to carry on a lawful business (37a—¶¶20 and 21 of Association complaint). But since the Supreme Court of Alabama has rested its holding on preemption on the ground of interference with the internal economy of the vessels, we turn to that issue.

The trilogy of *Benz, Incres* and *McCulloch,* all *supra,* stands for the proposition that the National Labor Relations Act is inapplicable when American unions seek to organize, represent or support the foreign crews aboard the foreign vessels. Such conduct interferes with the in-

ternal economy of the vessel—the employer-employee relationship between the owner or operator of the foreign flag vessel and the foreign crew. The Act was never intended to encompass that employer-employee relationship. On the other hand, *Marine Cooks and Stewards* and *Ariadne,* both *supra,* instruct that when the picketing of American unions is to preserve their job opportunities here in the United States, such conduct is not an interference with the internal economy of the foreign flag vessel; and *Ariadne* pointedly holds that such conduct by American unions is activity protected by §7. Petitioners relied below upon *Marine Cooks and Stewards* and *Ariadne,* but neither case was adverted to in the opinion of the Alabama Supreme Court.

At bar, the conduct was solely to preserve job opportunities here in the United States—conduct not directed to internal economy. It follows, then, that the issue of internal economy of the foreign flag vessels must be removed from this case; and the doctrine of preemption controls. We first address preemption under §8 of the Act.

The National Labor Relations Board has exercised its jurisdiction and implemented the provisions of the Act where the unlawful conduct has occurred within our nation, notwithstanding the fact that the primary employer and its employees were foreign. *Washington-Oregon Shingle Weavers' Council* (*Sound Shingle Co.*), 101 NLRB 1159 (1952) and *International Wood Workers of America* (*T. Smith & Sons, Inc.*), 125 NLRB 209 (1959). See also *Madden* v. *Grain Elevator Workers Local 418,* 334 F. 2d 1014 (7 Cir. 1964), cert. den. 379 U.S. 967 and *Grain Elevator Workers Local 418* v. *NLRB,* 376 F. 2d 774 (D. C. Cir. 1967), cert. den. 389 U. S. 932; and the doctrine of preemption is

applicable whether or not there is a proximate employer-employee relationship, *Hotel Employees Union* v. *Sax Enterprises*, 358 U.S. 270 (1959); *Retail Clerks Local 560* v. *J. J. Newberry Co.*, 352 U.S. 987 (1957) and *Pocatello Building & Construction Trades Council* v. *C.H. Elle Const. Co.*, 352 U. S. 884 (1956). Congress has occupied the field of secondary picketing in commerce; Alabama may not trench upon the field.

As to §7 of the Act, it is now hornbook law that peaceful picketing for the purpose of mutual aid or protection is immune from state regulation. *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236, 245, 246; *Garner* v. *Teamsters, Chauffeurs and Helpers Local Union No. 776*, 346 U. S. 485, 494. Apposite is the statement in that case that

> "* * * it is implicit in the Act that the public interest is served by freedom of labor to use the weapon of picketing. For a state to impinge on the area of labor combat designed to be free is quite as much an obstruction of federal policy as if the state were to declare picketing free for purposes or by methods which the federal act prohibits." (346 U.S. at 500).

Accord: *United Mine Workers* v. *Arkansas Oak Flooring Co.*, 351 U.S. 62, 75 (1956); *Weber* v. *Anheuser-Busch, Inc.*, 348 U. S. 468, 474 (1955).

Finally, this Court in *Ariadne* foreclosed state regulation of picketing of a foreign flag vessel by American workers who protest substandard wages paid by the foreign flag vessel.

> "The jurisdiction of the National Labor Relations Board is exclusive and pre-emptive as to activities that are 'arguably subject' to regulation under §7 or §8 of the Act. * * * The activities of petitioner in this case met that test. The union's peaceful primary picketing to protest wage rates below established area standards arguably constituted protected activity under §7." (397 U.S. at 200, 201).

The concurring opinion of Mr. Justice White in *Ariadne* highlights our contentions here. That opinion stated that the union's job preservation picketing was clearly not proscribed by §8 of the Act and "that the peaceful and non-obstructive picketing on the public docks near the ships was union activity protected under the National Labor Relations Act" (397 U.S. at 202). Thus, we need not be concerned with whether the picketing in the instant case was "arguably" protected; it was absolutely protected by the Act.

Clearly, picketing by petitioners in the instant case was not subject to state regulation. The jurisdiction of the Board is exclusive.

II

Peaceful primary informational picketing to protest the loss of domestic jobs to foreign flag vessels paying substandard wages and benefits was an exercise of constitutionally protected freedom of speech and should not have been enjoined by the Alabama Court.

Peaceful primary informational picketing, whether banned by state statute, municipal ordinance or, as in the instant case, by state court injunction, is protected by the First and Fourteenth Amendments as an aspect of freedom of speech. Such picketing does not lose its protection be-

cause it is exercised at the situs of the dispute, or because the pickets have no employment relationship with the party picketed, or because the pickets effectively persuade others not to patronize the picketing party, or because the picketing incidentally results in an interference with the carrying on of a business, either that of the party picketed or secondary or tertiary parties.

Picketing may be regulated by the state, sometimes banned completely, if its methods are not peaceful or if its purposes or objectives are not lawful. If the latter, however, the state must specifically identify the type of anti-social conduct it seeks to limit or prohibit. In the instant case, the trial court, having made no findings of fact or conclusions of law, has left us in the dark as to the conduct which it believed to have been anti-social.

The picketing of the foreign flag vessels was peaceful and was, therefore, constitutionally protected as an exercise of free speech. *Thornhill* v. *Alabama*, 310 U. S. 88, 102-104 (1940); *Carlson* v. *California*, 310 U. S. 106, 112, 113 (1940). Said the court in *Carlson*:

> "For the reasons set forth in the opinion in Thornhill v. Alabama, supra, publicizing the facts in a labor dispute in a peaceful way through appropriate means, whether by pamphlet, by word of mouth or by banner, must now be regarded as within that liberty of communication which is secured to every person by the Fourteenth Amendment against abridgment by a state." (310 U.S. at 113).

Recent reaffirmations of *Thornhill* are *Amalgamated Food Employees* v. *Logan Valley Plaza*, 391 U. S. 308, 313

(1968) and *Police Department of Chicago* v. *Mosley*, 408 U. S. 92 (1972).

It was again argued in *Thornhill* that the Alabama statute could be saved because its ban on picketing was limited to the situs of the dispute. The argument received short judicial shrift (310 U.S. at 105, 106).

The fact that petitioners were not employees of the foreign flag vessels to which their primary picketing was directed cannot result in their loss of their freedom of speech. A state court may not find an unlawful purpose because there is no employment relationship and thus, in its view, no labor dispute. *American Federation of Labor* v. *Swing*, 312 U.S. 321 (1941); *Bakery Drivers Union* v. *Wohl*, 315 U. S. 769 (1942). This aspect of the matter was finally put to rest in *Cafeteria Employees* v. *Angelos*, 320 U.S. 293, 295-296 (1943); this line of cases was cited with approbation in *Logan Valley Plaza*, 391 U.S. at 314, 315.

The opinion of the Alabama Supreme Court brushes aside *Thornhill* and its progeny with the old saw that picketing is "speech plus" (17a). It is clear, however, that there was no "plus" in the instant case by mute pickets patrolling at the foreign flag vessels. The Alabama court relied heavily upon the line of cases holding that if there is a valid state policy to protect, such as state anti-trust policy, prohibition of racial quota hiring or forced union shop, etc., picketing may be limited or banned altogether. *International Brotherhood of Teamsters* v. *Vogt, Inc.*, 354 U.S. 284 (1957); *Giboney* v. *Empire Storage & Ice Co.*, 336 U.S. 490 (1949); *Hughes* v. *Superior Court*, 339

U.S. 460 (1950); *International Brotherhood of Teamsters* v. *Hanke*, 339 U.S. 470 (1950). This line of cases need not detain us inasmuch as the Alabama court was unable to point to any valid state policy. The Alabama court did, however, argue that the honoring of the picket lines by employees of the stevedoring companies resulted in an unlawful interference with the businesses of the stevedoring companies and of Malone, the farmer.

This Court has time and again held that the mere fact that a primary picket line may result in injury or damage cannot be the basis for restriction upon picketing. *Thornhill*, 310 U. S., at 104, 105; *Carlson*, 310 U. S. at 112. Merely because picketing is effective and the public refuses to patronize does not render the picketing in any way unlawful, *N.L.R.B.* v. *Fruit and Vegetable Packers*, 377 U.S. 58, 72 (1964). That was the famous "Tree Fruits" case in which this Court held that a nationwide consumer boycott was not proscribed secondary activity despite the fact of damage to the primary and secondary parties; it noted, *inter alia*, that a ban on such secondary picketing "might collide with the guarantees of the First Amendment" (*id.* at 63).

In holding that the picketing was an interference with the right of the complainants to conduct business, the Alabama Supreme Court relied heavily upon the enthusiastic testimony of petitioner Neira. That testimony, fairly read, was his personal expression of what he hoped the picketing would accomplish. The Court did not rely, however, upon the totality of Neira's testimony. It quoted a few vagrant personal expressions of his hope that the picketing would

be effective. The Alabama Supreme Court merely presumed that the trial judge found that there was wrongful interference, "for otherwise he would not have ordered the writ of temporary injunction to issue" (21a). It escapes us how the appellate court in Montgomery could have presumed how the trial court in Mobile viewed Neira's testimony in the absence of findings by the trial court.

Neira's testimony from the witness stand cannot, of course, change the purpose of the picketing as set forth on the picket signs and in the leaflets distributed by the mute pickets. Moreover, the purpose of the picketing was clearly set forth in the instructions which Neira received from the Committee of American Maritime Unions (113a, 114a). It is to be noted that the final numbered instruction advised that no one had authority to change the instructions except upon a writing from the Committee's headquarters. Neira testified that he had no authority to change the instructions (141a, 142a). Manifestly, whatever hope Neira entertained *in pectore* on the picket line, and later articulated on the witness stand, could not in any event have changed the purpose or the character of the peaceful primary nonobstructive informational picketing at the site of the vessels. It is more than distressing that the freedom of speech of American workingmen can be snatched away on such a feeble ground.

In *Seafarers International Union* v. *N.L.R.B.*, 265 F. 2d 585, 592 (D.C. Cir. 1959), it was held that hopes entertained by primary pickets that employees of secondary employers would not cross the picket line could not render the picketing unlawful, and in *Local 761, International Union of Elec-*

trical, etc., v. *N.L.R.B.*, 366 U.S. 667 (1961), this Court quoted with approval those portions of the opinion in the *Seafarers* case concerning the hope of the pickets that the picket line would be honored and the holding that picketing which induced secondary employees to respect a primary picket line is not the equivalent of picketing which has as an object the inducing of employees to engage in concerted conduct against their own secondary employer in order to force him to refuse to deal with the primary employer (*id.* at 673). This Court there held that primary picketing at a common situs, appealing to neutral employees whose tasks aid the primary employer's everyday operations, is not unlawful. Accord: *United Steel Workers* v. *N.L.R.B.*, 376 U.S. 492, 501 (1964).

This Court has repeatedly admonished that freedom of speech may not be curtailed without clearly identifying the unlawful conduct which is sought to be prohibited. First and Fourteenth Amendment rights may not be taken away without clear and sufficient findings of fact; *Wood* v. *Georgia*, 370 U.S. 375, 382-384 (1962)—no findings; *Chase* v. *Robson*, 435 F. 2d 1059, 1061 (7 Cir. 1970)—insufficient findings; see also *Logan Valley Plaza*, 391 U.S. at 314. We do not rest our argument entirely on the lack of findings. It is clear that, in any event, there could have been no finding that the purpose of the picketing was unlawful.

By virtue of the injunction against peaceful primary informational picketing, plaintiffs have been deprived of their freedom of speech. This Court must restore it to them.

Conclusion

We submit that where American seamen are involved in a dispute with foreign flag vessels, protesting their loss of domestic employment opportunities, as at bar, their peaceful primary informational picketing can be regulated, if at all, only by the National Labor Relations Board. This Court has reiterated the doctrine of preemption. The Alabama courts have ignored the decisions of this Court.

Also ignored were decisions of this Court holding that peaceful picketing is within the protection of the First and Fourteenth Amendments, and that the right of free speech cannot be lost without specific findings of unlawful purpose or unlawful means. Here, the voices of American seamen were stilled in Alabama on the mere assumption of the Supreme Court of that state that the trial court must have found an unlawful purpose, otherwise it would not have issued the injunction. Such an assumption was surely not within the competence of an appellate court and was not, of course, warranted by anything in the record. The purpose of the picketing was clearly set forth on the picket signs, in the leaflets distributed by mute pickets and in the instructions from the Committee of American Maritime Unions. American seamen have lost the right of free speech because, said the Supreme Court of Alabama, their speech was effective or, at least, one union member hoped

that it would be effective. This Court must restore those First and Fourteenth Amendment freedoms to American seamen.

Respectfully submitted,

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Certificate of Counsel

I, DAVID JAFFE, one of the attorneys for Petitioners herein, do hereby certify that on this 8th day of November, 1973, three copies of the foregoing petition for writ of certiorari have been served on each of the attorneys for Respondents as follows:

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by mailing the same to them through the United States Postal Service, postage prepaid.

/s/ DAVID JAFFE

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